

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

PHILLIP MOCEK,

Plaintiff,

vs.

CASE NO. 2011-CV-1009 JB/KBM

CITY OF ALBUQUERQUE, et al.,

Defendants.

**PLAINTIFF'S MOTION FOR COURT TO TAKE JUDICIAL NOTICE OF
DEPARTMENT OF JUSTICE'S STATEMENT OF INTEREST IN
GARCIA V. MONTGOMERY COUNTY, MD**

Plaintiff Phillip Mocek, through his undersigned attorney, moves this Court to take judicial notice of the Department of Justice's Statement of Interest filed in *Garcia v. Montgomery County, MD*, No. 8:12-cv-03592 (D.Md.) in support of his opposition to the City of Albuquerque's Motion to Dismiss Mocek's Complaint. Statement of Interest attached as Exhibit 1.

In *Garcia, supra*, the United States Department of Justice filed a Statement of Interest ("SOI") on March 4, 2013, urging the Court to hold that "individuals have a First Amendment right to record police officers in the public discharge of their duties, and . . . officers violate individuals' Fourth and Fourteenth Amendment rights when they seize such recordings without a warrant or due process." SOI, p. 1. The Department filed a similar statement in *Sharp v. Baltimore City Police Dept., et al.*, No. 1:11-cv-02888 (D. Md.). The DOJ specifically addressed the filing of charges against a person recording officers in public, such as loitering, disorderly conduct and resisting arrest as being suspect because they "are all too easily used to curtail expressive conduct or retaliate against individuals for exercising their First Amendment rights." The issues in *Garcia*

are almost identical to those in the case at bar, in which the DOJ took the opposite position. The DOJ's statement is directly on point to Mocek's claims.

Plaintiff believes this Court should be aware of this important policy discussion as it relates to Mr. Mocek's claims.

Wherefore, Plaintiff moves this Court to take judicial notice of the Department of Justice's Statement of Interest in *Garcia v. Montgomery County, MD*, and for all other relief that law and justice allow.

Respectfully submitted,

Electronically submitted Mary Lou Boelcke
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One of Attorneys for Plaintiff

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing **PLAINTIFF'S MOTION FOR COURT TO TAKE JUDICIAL NOTICE OF DEPARTMENT OF JUSTICE'S STATEMENT OF INTEREST IN *GARCIA V. MONTGOMERY COUNTY, MD*** was served on opposing counsel of record by electronically filing it on July 12, 2013.

/s/ Mary Lou Boelcke
Mary Louise Boelcke